

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

Zenith Industrial Corporation,

Miscellaneous Case No. 06-19

Debtor.

Hon. Phillip J. Shefferly

\_\_\_\_\_  
Zenith Industrial Corporation,

Plaintiff,

vs

Rich Coast Inc.,

Defendant.

\_\_\_\_\_

**ORDER DENYING WITHOUT PREJUDICE MOTION  
FOR ASSIGNMENT OF RIGHTS AND TURNOVER ORDER**

On August 13, 2004, a judgment in the amount of \$26,629.79, plus costs and interest, was entered by the U.S. Bankruptcy Court for the District of Delaware in favor of Zenith Industrial Corporation and against Rich Coast, Inc. in adversary proceeding #04-52942. On December 15, 2006, a certification of judgment for registration in another district was filed in this Bankruptcy Court certifying the judgment for registration in this Court. On April 20, 2007, Plaintiff filed a motion for assignment of rights under F.R.C.P. 69, Bankruptcy Rule 7069, and Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104. On May 10, 2007, Plaintiff filed a certificate of no response with respect to its motion. Plaintiff then submitted to the Court a proposed order granting the motion.

After reviewing the motion and proposed order, the Court entered an order on May 31, 2007 scheduling a hearing on June 18, 2007 with respect to the motion for assignment of rights and

turnover order. In its order scheduling the hearing, the Court identified a number of concerns about the relief requested in the motion and proposed order and the legal authority for such relief. First, the motion and proposed order requested an “assignment” and “turnover” of Defendant’s assets to Plaintiff but made no provision for disposition of such assets after Plaintiff’s judgment had been satisfied from such assets. Second, the motion and proposed order directed that the “assignment” and “turnover” of Defendant’s assets be made to Plaintiff, “in care of its attorney, David J. Cook,” located in San Francisco, California. Plaintiff provided no authority to the Court permitting an “assignment” or “turnover” of Defendant’s assets to Plaintiff in care of Plaintiff’s lawyer in California. Third, the motion and proposed order included provisions stating that non-compliance with the order “may result in contempt in which you may be incarcerated in the county jail . . . pursuant to California Code of Civil Procedure, § 1209.” No reason was advanced in the motion as to why California statutory provisions would somehow have application to the enforcement of Plaintiff’s judgment in Michigan.

At the hearing on June 18, 2007, Plaintiff appeared through local counsel. In light of the concerns raised by the Court in its order of May 31, 2007, Plaintiff’s local counsel requested that the Court adjourn the hearing to permit Plaintiff the opportunity to address those concerns. The Court granted that request and rescheduled the hearing for July 2, 2007.

On July 2, 2007, Plaintiff again appeared through local counsel. At that hearing, Plaintiff’s local counsel explained that Plaintiff intended to only request relief that was authorized under the applicable provisions of Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104, and conceded that the references in Plaintiff’s motion to California Code of Civil Procedure provisions have no application to the enforcement of Plaintiff’s judgment in Michigan. The Court again expressed its reservations

regarding the authority to grant certain of the relief requested in Plaintiff's motion. At the conclusion of the hearing, the Court indicated that it would grant Plaintiff's motion in part, but explained that it would only grant such motion to the extent that the relief requested was specifically authorized by Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104. Plaintiff's counsel indicated that he understood the Court's ruling. The Court stated that it would not sign the proposed order that Plaintiff had previously submitted because it included relief not authorized under the applicable provisions of Mich. Comp. Laws Ann. Instead, the Court requested that Plaintiff's counsel submit a new order consistent with the Court's ruling, providing only for relief specifically authorized by Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104. The Court further stated plainly that it would not sign an order that did not comport exactly with the Court's ruling.

Plaintiff's counsel in California, David J. Cook, subsequently submitted to the Court a proposed order granting Plaintiff's motion for assignment of rights and turnover order. The Court has reviewed the proposed order and, unfortunately, concludes that it cannot be entered because it still provides for relief that was neither granted by the Court at the July 2, 2007 hearing, nor authorized under the applicable provisions of Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104.

First, the proposed order submitted by Plaintiff still provides for a general "assignment" of all of Defendant's "accounts, accounts receivable, rights to payment of money, contract rights, rights to payment of money to third parties, contingent rights, deposits and deposit accounts, claims against third parties, monies due from third parties . . .". Whatever may be the law in California, no authority has been provided to this Court that permits such a general, blanket "assignment" under Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104. Second, Plaintiff's proposed order still provides that the "assignment" of all of such assets be made directly to "Plaintiff, Zenith Industrial Corporation, in care

of its attorney, David J. Cook, Cook, Perkiss & Lew, P.L.C., 333 Pine Street, 3<sup>rd</sup> Floor, San Francisco, CA 94104.” Even if Michigan law somehow permitted the Court to order a blanket “assignment” of the assets of a judgment debtor, Plaintiff has not provided any authority for the Court to order that such blanket “assignment” be made “in care of” Plaintiff’s counsel. Third, Plaintiff’s proposed order still provides that Defendant shall “turn over all monies which the Defendant controls, such as funds held under bank accounts, checks, cash money orders, coins, currency or funds . . .” to Plaintiff’s attorney, David J. Cook in California. The paragraph of the proposed order calling for such “turnover” purports to be based upon Mich. Comp. Laws Ann. § 600.6104(3) but that statutory provision only authorizes this Court to order satisfaction of a judgment out of a judgment debtor’s property and contains no authority for the Court to order a “turnover” of a judgment debtor’s assets to an attorney for a judgment creditor. (Mich. Comp. Laws Ann. § 600.6104(4) does permit the Court to appoint a receiver over a judgment debtor’s property but even that statutory provision contains no authority for the Court to order either an “assignment” or a “turnover” of assets to an attorney for a judgment creditor.) Fourth, the proposed order contains a provision purporting to notify Defendant that the Court has entered a “restraining order” and that “failure to comply” with the restraining order “may result in contempt of court.” Plaintiff’s motion did not request a restraining order, the Court has not entered a restraining order, and no authority has been provided to the Court to support the inclusion of such language in the proposed order when such relief was not requested in Plaintiff’s motion.

On the one hand, the Court is sympathetic to Plaintiff’s circumstances. Defendant has not paid a lawfully entered judgment for \$26,629.79 that was entered on August 13, 2004 by the Bankruptcy Court for the District of Delaware. Defendant has offered no explanation to this Court

as to why such judgment has not been paid, nor has it offered any defense to Plaintiff's motion for supplementary proceedings to enforce that judgment in this Court. Plaintiff is unquestionably entitled to take all lawful actions to enforce the collection of its judgment. On the other hand, such facts do not mean that Plaintiff may take actions that are not lawful. Fed. R. Civ. P. 69(a), as incorporated by Fed. R. Bankr. P. 7069 in this adversary proceeding, makes it clear that:

The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the U.S. governs to the extent that it is applicable.

Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104 set forth the practice and procedure for proceedings supplementary to judgment in the state of Michigan. Those provisions do not authorize the relief requested in Plaintiff's motion and proposed order. Plaintiff is entitled to enforce its judgment, but must do so in accordance with Michigan practice and procedure. The approved forms for Michigan practice and procedure for writs of garnishment and attachment can be obtained by Plaintiff from the publications section of the state of Michigan court's website ([www.courts.michigan.gov](http://www.courts.michigan.gov)). If there is additional relief that Plaintiff requests pursuant to Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104, it may do so by motion, but Plaintiff is limited to obtaining only the relief that is authorized in the proceedings supplementary to judgment set forth in those statutes. Because the relief requested in Plaintiff's motion and proposed order is not supported by Michigan practice and procedure, is not authorized under Mich. Comp. Laws Ann. §§ 600.6101 and 600.6104, and was not granted by the Court at the hearing on July 2, 2007,

IT IS HEREBY ORDERED that Plaintiff's motion for assignment of rights and turnover order is denied without prejudice to its right to conduct further supplementary proceedings consistent

with practice and procedure in the state of Michigan.

/s/

---

PHILLIP J. SHEFFERLY  
U.S. BANKRUPTCY JUDGE

Dated: October 3, 2007